In The

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-431

RANDOLPH ROBINSON,

Petitioner,

vs.

STATE OF OHIO,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

SIMON L. LEIS, JR.
Prosecuting Attorney

LEONARD KIRSCHNER
Ass't Prosecuting Attorney

DANIEL J. BREYER
Ass't Prosecuting Attorney

420 Hamilton County Courthouse
1000 Main Street
Cincinnati, Ohio 45202

COURT INDEX PRESS, INC. — 215 E. Ninth Street, Cincinnati, Ohio 45202 — (513) 241-1450

TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	2
CONSTITUTIONAL PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR DENYING THE WRIT	8
I. Will the United States Supreme Court consider and decide federal constitutional issues which have neither been raised before, nor passed upon by, the Ohio Supreme Court?	8
II. Where an individual has been placed under custodial arrest for driving while under suspension, and has been removed from the scene of the arrest by the police, may the police reasonably impound the individual's automobile when that vehicle has been left sitting squarely in the middle of a public road?	10
III. Is the routine inventory of the contents of a vehicle lawfully impounded by police reasonable when it is performed in response to several distinct needs, to wit: the protection of the owner's property while it remains in police custody, the protection of the police against claims or disputes over lost or stolen property, the protection of the police from potential danger, and when such practice is also an essential response to incidents of theft or vandalism?	12

Page

IV. Is the routine inventory or search of a lawfully impounded automobile reasonable in scope when it is conducted in a manner designed to be no more intrusive than is necessary to protect the owner's property while it remains in police custody, to protect the police against claims or disputes over lost or stolen property, to protect the police from potential danger, and to respond to incidents of theft or vandalism? 12

V. When the trunk of an automobile is the logical repository for the temporary storage of valuables, is an inventory which, pursuant to established police department procedure, includes an examination of the trunk reasonable and in conformity with the provisions of the Constitution of the United States? 13

CONCLUSION 21

APPENDIX

A. Completed Inventory Form 1b

TABLE OF AUTHORITIES

Cases: Page

Cady v. *Dombrowski* (1973), 93 S. Ct. 2523 ..11, 16, 21

Cardinale v. *Louisiana* (1969), 89 S. Ct. 1161 8

Chimel v. *California* (1969), 89 S. Ct. 2034 15

Commonwealth v. *Tisserand* (Mass. App. 1977) 363 N.E. 2d 530 17

Griffin v. *State* (Ind. App. 1978) 372 N.E. 2d 497 .. 17

In Re: One 1965 Econoline, Etc. (1973), 511 P. 2d 168 17

People v. *Hamilton* (Ill. App. 1978) 371 N.E. 2d 1234 18

People v. *Norman* (1975), 538 P. 2d 237 17

Shadwick v. *City of Tampa* (1972), 92 S. Ct. 2119 .. 9

South Dakota v. *Opperman* (1976), 428 U.S. 364 .....5, 13, 14, 15, 16, 17, 18, 21

Stanley v. *Georgia* (1969), 89 S. Ct. 1243 15

State v. *Vigil* (1974), 524 P. 2d 1004, cert. den., 420 U.S. 955 17

State v. *Wallen* (Neb. 1970) 173 N.W. 2d 372, cert. den., 90 S. Ct. 2211 17

Tacon v. *Arizona* (1973), 93 S. Ct. 998 9

Terry v. *Ohio* (1968), 88 S. Ct. 1868 14

United States v. *Barnes* (S.D. N.Y., 1977) 443 F. Supp. 137 .....16, 18

Page

United States v. *Edwards* (C.A. 5, 1978) 577 F. 2d 883, cert. den. 99 S. Ct. 458 ..... 14, 18, 19

United States v. *Finnegan* (C.A. 9, 1977) 568 F. 2d 637 16

United States v. *Friesen* (C.A. 9, 1976), 545 F. 2d 672 . 16

United States v. *Martin* (C.A. 10, 1977) 556 F. 2d 1143 16

United States v. *McCambridge* (C.A. 1, 1977) 551 F. 2d 865 16

United States v. *Morrow* (C.A. 7, 1976) 541 F. 2d 1229 16

United States v. *Ortiz* (1975), 95 S. Ct. 2585 9

United States v. *Thrower* (E.D. Pa., 1977) 442 F. Supp. 272 16

United States v. *Walton* (C.A. 8, 1976) 538 F. 2d 1348 16

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-431

RANDOLPH ROBINSON,

Petitioner,

vs.

STATE OF OHIO,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

OPINIONS BELOW

The June 27th, 1979, opinion of the Supreme Court of Ohio, of which petitioner seeks review, is reported at 58 Ohio St. 2d 478, 391 N.E. 2d 317 (1979), and is set forth in petitioner's brief as Appendix "A". The opinion of the Ohio First District Court of Appeals is unreported and set forth in petitioner's brief as Appendix "B".

JURISDICTION

On June 27th, 1979, the Ohio Supreme Court issued an opinion holding that a standard inventory search of the trunk of a lawfully impounded automobile does not contravene the Fourth Amendment to the United States Constitution. It should be pointed out that the propriety of the impoundment of the automobile involved was never questioned in the Supreme Court of Ohio. Petitioner seeks jurisdiction in this Court pursuant to 28 U.S.C. Section 1257 (3), claiming that certain evidence was seized in violation of his constitutional rights.

QUESTIONS PRESENTED

I. Will the United States Supreme Court consider and decide federal constitutional issues which have neither been raised before, nor passed upon by, the Ohio Supreme Court?

II. Where an individual has been placed under custodial arrest for driving while under suspension, and he has been removed from the scene of the arrest by the police, may the police reasonably impound the individual's automobile when that vehicle has been left sitting squarely in the middle of a public road?

III. Is the routine inventory of the contents of a vehicle lawfully impounded by police reasonable when it is performed in response to several distinct needs, to wit: the protection of the owner's property while it remains in police custody, the protection of the police against claims or disputes over lost or stolen property, the protection of the police from potential danger, and when such practice is also an essential response to incidents of theft or vandalism?

IV. Is the routine inventory or search of a lawfully impounded automobile reasonable in scope when it is conducted in a manner designed to be no more intrusive than is necessary to protect the owner's property while it remains in police custody, to protect the police against claims or disputes over lost or stolen property, to protect the police from potential danger, and to respond to incidents of theft or vandalism?

V. When the trunk of an automobile is the logical repository for the temporary storage of valuables, is an inventory which, pursuant to established police department procedure, includes an examination of the trunk reasonable and in conformity with the provisions of the Constitution of the United States?

CONSTITUTIONAL PROVISIONS

1. Fourth Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable seaches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

2. Fourteenth Amendment

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immuni-

ties of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner, Randolph Robinson, was arrested on February 19th, 1977, for Driving Under Suspension. He was transported to the Greenhills, Ohio, police station by a police cruiser and his own automobile was impounded. Incident to impoundment, Officer Donald Yost of the Greenhills Police Department inventoried the contents of the vehicle pursuant to established departmental policy. As a consequence of this inventory he discovered, in plain view, a large quantity of marijuana.

Robinson was subsequently indicted by the Hamilton County, Ohio, grand jury for the offense of Possession of Marijuana above the bulk amount, a violation of Ohio Revised Code, Section 2925.03 (A) (4). Prior to trial a motion to suppress evidence was filed by Robinson and heard by the Honorable Thomas C. Nurre, a Judge of the Hamilton County Court of Common Pleas. The motion was overruled on June 7th, 1977.

On September 28th, 1977, Robinson withdrew his plea of not guilty and entered a plea of no contest to the offense charged in the indictment. The Court found him guilty of that crime and from that conviction Robinson brought an appeal in the Court of Appeals for the First District of Ohio under number C 77635. That appeal alleged that the trial court had erred in denying Robinson's motion to suppress evidence filed prior to trial. The

Court of Appeals reversed the trial court's judgment and the State of Ohio's subsequent motion for leave to appeal was granted by the Ohio Supreme Court on November 9, 1978. In a decision rendered on June 27, 1979, the Ohio Supreme Court, relying on *South Dakota* v. *Opperman* (1976), 428 U.S. 364, reversed the Court of Appeals and reinstated the judgment of the trial court. Robinson now petitions this Court for a writ of certiorari.

The relevant facts pertaining to this petition are as follows. On February 9, 1977, Officer Donald P. Yost of the Greenhills, Ohio, police department observed an automobile proceeding south-bound on Winton Road at a high rate of speed. Yost began following the vehicle and was shortly able to determine that the automobile was travelling at 50 miles per hour in a 35 mile per hour zone. Yost stopped the speeding car on Winton Road, just outside of Greenhills, about two hundred feet north of Valley View Drive (TP 5). Winton Road at that point is a heavily traveled four lane highway while Valley View Drive is a lesser used two lane road.

Yost approached the offending vehicle and asked for the operator's license of the driver. After obtaining the license Yost instructed the driver to pull his vehicle off the four lane highway onto the less traveled Valley View Drive. The driver, who at this point was identified as Randolph Robinson, complied with the officer's request. Yost returned to his cruiser and followed Robinson onto the smaller road where both vehicles were stopped square in the lane of traffic (TP 10-11).

Officer Yost then ran a computer check on Randolph Robinson's operator's license. The computer report revealed that Robinson's driving privileges were, at that time, under suspension. Yost sent an administrative mess-

age to the Bureau of Motor Vehicles by teletype to confirm the possible suspension. When he received such a confirmation, Yost instructed Robinson to get out of his car and Yost placed him under arrest for driving with a suspended operator's license. (TP 13).

It became apparent to Yost, at this point, that Robinson's vehicle would have to be towed from the scene (TP 16). Greenhills Police Department procedure dictates that any time a physical arrest is made and a motor vehicle is in such a manner that the police department cannot totally insure its safety, that vehicle is to be impounded and removed to a place of safety (TP 36). The impoundment was further made necessary by the fact that Greenhills Police Department procedure prohibits police officers from driving the defendant's automobile and the defendant himself was not qualified to drive due to the apparent suspension (TP 39). Vehicles impounded by the City of Greenhills are towed by a private wrecker to a private lot maintained in connection with a service station. The driver of the wrecker insists upon retaining at least the ignition key so that the impounded automobile may be moved around the lot (TP 25).

Yost requested another police vehicle to respond to the scene for the purpose of transporting Robinson to the police station (TP 14). Realizing that he was going to be conveyed in this manner, Robinson asked for the keys to his vehicle. Yost advised him that:

> "they were necessary for the wrecker, that I reckoned they would be given back to him after the car was towed." (TP 13)

Robinson made no response to this explanation by Officer Yost and there is no evidence in the record that Robinson

asked to lock the automobile himself or that he evidenced any further interest whatsoever in the automobile. After Robinson was taken away, Yost summoned a wrecker for purposes of impounding the vehicle (TP 15). Since there were valuables within plain view inside the automobile Yost decided to and did perform an inventory of the vehicle while awaiting the wrecker (TP 16, 17).

The Greenhills police department has a standard procedure to be followed in conducting an inventory of an automobile which is to be impounded. Any time a physical arrest is made and a motor vehicle is in such a manner that the police department cannot totally insure its safety, that vehicle is to be impounded and removed to a place of safety. Before being removed from the initial scene, the individual officer will inventory the entire contents of the vehicle and maintain a record of that inventory (TP 36). Departmental policy does not require that the inventory be performed in front of witnesses as the officers frequently work by themselves and the presence of a witness would not be practical (TP 23). The appropriate inventory forms are kept in the police cruisers (TP 17).

In the case at bar, Officer Yost scrupulously adhered to police departmental procedures. He obtained an inventory form from his cruiser, and began taking inventory of the contents of the motor vehicle to be impounded. Yost duly recorded the contents pursuant to departmental regulations (TP 17). He checked the passenger compartment of the vehicle for valuable articles and recorded them. Then he checked the glove compartment for valuable articles and recorded its contents. Yost then entered the trunk and recorded the articles of value found there (TP 19-20). He did this because he was of the opinion that the trunk of this particular vehicle could not be sufficiently secured for valuable articles (TP 27).

Inside the trunk, Officer Yost found a metal toolbox, a large number of wood scraps, caulking compound, loose nails, rags, a large white plastic bag and an assortment of articles he deemed to be without intrinsic value (TP 20, 22). After examining the inside of the metal toolbox, Officer Yost was of the opinion that the tools inside were of such considerable value that they should be removed from the automobile. Consequently, the toolbox, along with certain other valuables found in the passenger compartment, was removed from the car and locked in the police station (TP 22, Appendix A). Upon looking inside the large plastic bag to determine the value of its contents, Yost discovered approximately fourteen (14) smaller plastic bags containing some sort of green vegetation. These bags were also removed from the vehicle.

REASONS FOR DENYING WRIT

I. WILL THE UNITED STATES SUPREME COURT CONSIDER AND DECIDE FEDERAL CONSTITUTIONAL ISSUES WHICH HAVE NEITHER BEEN RAISED BEFORE, NOR PASSED UPON BY, THE OHIO SUPREME COURT?

This Court has held many times that it will not decide federal constitutional issues raised before it for the first time on review of state court decisions. See *Cardinale* v. *Louisiana* (1969), 89 S. Ct. 1161, and the numerous cases cited therein.

In the first, second, and fourth questions which petitioner presents to this Court for review, he challenges the propriety of the impoundment of his automobile.

This issue was clearly *not* before the Ohio Supreme Court and was not passed upon by that court. The Ohio First District Court of Appeals stated in their decision, attributing it no more respect than a footnote, that:

> "We have no difficulty with the legality and propriety of the arrest of appellant or the impoundment of his car under the stated circumstances."

This statement was never challenged either by the State of Ohio or by Randolph Robinson. The state's appeal to the Ohio Supreme Court was restricted to the issues of whether the taking of an inventory constituted a search and what the permissible scope of such an inventory might be. That the propriety of the impoundment was never before the Ohio Supreme Court is patently obvious from that court's decision, wherein it is stated:

> "The query posed for resolution in the cause *sub judice* is whether the Fourth Amendment to the United States Constitution is contravened when police, pursuant to standard department procedure, conduct an inventory search of the trunk of a *lawfully impounded automobile*" (emphasis added).

In the instant case, the "legality and propriety of the arrest of appellant or the impoundment of his car "is an issue which was not presented in the Ohio Supreme Court." Petitioner's claims that such an issue was briefed and argued by both parties in the Ohio Supreme Court is simply not true. It is respectfully submitted that any issue dealing with the propriety of the vehicle impoundment in the instant case is not properly before this Court. See *Shadwick* v. *City of Tampa* (1972), 92 S. Ct. 2119; *Tacon* v. *Arizona* (1973), 93 S. Ct. 998; *United States* v. *Ortiz* (1975), 95 S. Ct. 2585.

II. WHERE AN INDIVIDUAL HAS BEEN PLACED UNDER CUSTODIAL ARREST FOR DRIVING WHILE UNDER SUSPENSION, AND HAS BEEN REMOVED FROM THE SCENE OF THE ARREST BY THE POLICE, MAY THE POLICE REASONABLY IMPOUND THE INDIVIDUAL'S AUTOMOBILE WHEN THAT VEHICLE HAS BEEN LEFT SITTING SQUARELY IN THE MIDDLE OF A PUBLIC ROAD?

Although the issue was not presented in, nor faced by, the Ohio Supreme Court, petitioner now asks this Court to consider the legality and propriety of the impoundment of his automobile. Petitioner points out several factors which he feels would have dictated against the police seizure of his automobile. These include:

1) the custodial arrest of petitioner took place a mere mile from his home;

2) it was eventually discovered that petitioner's license was valid;

3) the police station was but one-half (½) mile from the scene of the arrest;

4) the car could have been left parked on the side of the road.

These representations by petitioner have one thing in common. They appear no place in the records of the case at bar.

The critical facts which are preserved in the transcript of the hearing on petitioner's motion to suppress deserve some mention. Robinson was stopped by a single police officer for speeding. A subsequent and conscientious check

revealed that Robinson's privilege to drive a motor vehicle in Ohio had been suspended. Robinson was placed under arrest and transported from the scene. His automobile was left standing squarely in the center of a public road. Greenhills, Ohio, police regulations dictate that any time a physical arrest is made and a motor vehicle is in such a manner that the police department cannot totally insure its safety, that vehicle is to be impounded and removed to a place of safety (TP 36). Once Robinson was made aware of the fact that his vehicle was to be towed, he offered no alternative suggestions to that procedure. This case, with an unattended automobile standing squarely in the center of a public road, is similar to *Cady* v. *Dombrowski* (1973), 93 S. Ct. 2523, wherein an automobile, at the direction of police and for elemental reasons of safety, was towed to a private garage. Here, as in *Cady, supra,* there is no suggestion, substantiated in the record:

> ". . . that the officers' action in exercising control over it by having it towed away was unwarranted either in terms of state law or sound police procedure."

It is submitted that the impoundment of petitioner's automobile was the only reasonable course of action available to Officer Yost. To have done otherwise would have been irresponsible and would have constituted a violation of the officer's duty towards those citizens travelling lawfully upon the public highways.

III. **IS THE ROUTINE INVENTORY OF THE CONTENTS OF A VEHICLE LAWFULLY IMPOUNDED BY POLICE REASONABLE WHEN IT IS PERFORMED IN RESPONSE TO SEVERAL DISTINCT NEEDS, TO WIT: THE PROTECTION OF THE OWNER'S PROPERTY WHILE IT REMAINS IN POLICE CUSTODY, THE PROTECTION OF THE POLICE AGAINST CLAIMS OR DISPUTES OVER LOST OR STOLEN PROPERTY, THE PROTECTION OF THE POLICE FROM POTENTIAL DANGER, AND WHEN SUCH PRACTICE IS ALSO AN ESSENTIAL RESPONSE TO INCIDENTS OF THEFT OR VANDALISM?**

IV. **IS THE ROUTINE INVENTORY OR SEARCH OF A LAWFULLY IMPOUNDED AUTOMOBILE REASONABLE IN SCOPE WHEN IT IS CONDUCTED IN A MANNER DESIGNED TO BE NO MORE INTRUSIVE THAN IS NECCESSARY TO PROTECT THE OWNER'S PROPERTY WHILE IT REMAINS IN POLICE CUSTODY, TO PROTECT THE POLICE AGAINST CLAIMS OR DISPUTES OVER LOST OR STOLEN PROPERTY, TO PROTECT THE POLICE FROM POTENTIAL DANGER, AND TO RESPOND TO INCIDENTS OF THEFT OR VANDALISM?**

V. **WHEN THE TRUNK OF AN AUTOMOBILE IS THE LOGICAL REPOSITORY FOR THE TEMPORARY STORAGE OF VALUABLES, IS AN INVENTORY WHICH, PURSUANT TO ESTABLISHED POLICE DEPARTMENT PROCEDURE, INCLUDES AN EXAMINATION OF THE TRUNK REASONABLE AND IN CONFORMITY WITH THE PROVISIONS OF THE CONSTITUTION OF THE UNITED STATES?**

In *South Dakota* v. *Opperman,* 428 U.S. 364 (1976), the United States Supreme Court established that inventories made pursuant to standard police procedures were reasonable. The court there stated:

> ". . . this court has consistently sustained police intrusions into automobile impounded or otherwise in lawful police custody where the process is aimed at securing or protecting the car and its contents." *Opperman, supra,* at 3099.

In reversing the Supreme Court of South Dakota, the United States Supreme Court, citing numerous state court decisions, held that the routine inventory of a defendant's locked automobile which had been lawfully impounded did not involve an "unreasonable" search in violation of the Fourth Amendment, especially since the inventory was prompted by the presence in plain view of a number of valuables inside the vehicle.

In the case at bar, a review of the facts makes it obvious that petitioner Robinson's vehicle was lawfully impounded. Indeed, in its decision reversing the trial court, the First District Court of Appeals stated:

> "We have no difficulty with the legality and propriety of the arrest of appellant or the impoundment of his car under the stated circumstances."

After the decision was made to impound the vehicle, the arresting officer observed valuable articles within plain view inside the automobile. For this reason, the officer decided to and did perform an inventory of the contents of the vehicle. This inventory was performed strictly in accord with the established police department procedure. Every article discovered was listed on a standard form which had been carried in the police cruiser and the valuable articles were removed to the safety of the police department.

There can be no doubt that the police officer in the instant case inventoried the contents of the vehicle to accomplish several goals, to wit: the protection of the owner's property while it remained in police custody, the protection of the police against claims or disputes over lost or stolen property, and to prevent and discourage theft and vandalism. It is submitted that on the basis of *Opperman* and the numerous decisions cited therein, this court must agree that police officers, who follow a standard departmental and routine procedure in securing and inventorying the contents of an impounded automobile, are acting reasonably and not in violation of the Fourth Amendment.

Petitioner contends that the scope of the inventory in the instant case was unreasonable. The Ohio Supreme Court expressly rejected that contention, citing to the rationale set forth in *Opperman, supra,* and *United States* v. *Edwards* (C.A. 5, 1978), 557 F. 2d 883, cert. den. 99 S. Ct. 458.

The scope of a search or other intrusion must be strictly tied to and justified by the circumstances which renderd its initiation permissible. See *Terry* v. *Ohio,* 88 S. Ct. 1868, 1878 (1968). Courts have held previous searches which

were reasonable at their inception to have violated the Fourth Amendment by virtue of their "intolerable" intensity and scope.

In *Chimel* v. *California,* 89 S. Ct. 2034 (1969), police officers arrested petitioner in his home and incident to this arrest proceeded to conduct an extensive search of his entire three bedroom house, including the attic, garage, and workshop. The reason advanced to justify this warrantless search was the "search incident to an arrest" exception. The established rationale for that exception was to prevent an arrested person from obtaining weapons or destructible evidence from his person or the immediate area within his reach. The Supreme Court suppressed evidence seized in the house as it felt the officers had exceeded the allowable scope of a "search incident to an arrest". It was clear in that case that a handcuffed defendant could not retrieve weapons from his attic, garage, or other areas far removed from his person. See also *Stanley* v. *Georgia,* 89 S. Ct. 1243 (1969).

In the context of an inventory of a lawfully impounded vehicle, the scope of such inventory is reasonable if it is conducted in a manner designed to be no more intrusive than is necessary to accomplish the goals which rendered its initiation permissible. These goals include the protection of the owner's property while it remains in police custody, the protection of the police against claims of lost or stolen property, the protection of the police from potential danger, and to respond to incidents of theft or vandalism, *Opperman, supra.*

It should be beyond dispute that the scope of a legitimate inventory could logically and validly extend to the trunk of a vehicle and its contents. If the purpose of an inventory is to record the valuables and other personal prop-

erty found in an impounded automobile, it would seem illogical to limit the inspection to a cursory glance at the passenger compartment. The trunk of a vehicle is a logical repository for the temporary storage of valuables. To hold that a locked car could be entered to record valuables in plain view but a locked trunk could not be entered would be a holding glaringly inconsistent with the established needs initially responsible for justifying any inventory procedure. Furthermore, although in *Opperman* the incriminating evidence was not found in the trunk, the court in *Opperman* indicated that they were making their decision on the basis of *Cady* v. *Dombrowski,* 93 S. Ct. 2523 (1973). In *Cady,* the Supreme Court specifically stated:

> "Where, as here, the trunk of an automobile which the officer reasonably believed to contain a gun, *was vulnerable to intrusion by vandals,* we hold that the search was not 'unreasonable' within the meaning of the Fourth and Fourteenth Amendments."

Many state and federal courts have been faced with the issue of an inventory search both before and after *Opperman.* In *United States* v. *Friesen,* 545 F. 2d 672 (9th Cir. 1976), the inventory of the contents of a suitcase was upheld on the basis of *Opperman.* In *United States* v. *McCambridge,* 551 F. 2d 865 (1st Cir. 1977), the court upheld the right of law enforcement officials to inventory the contents of an impounded car, including the contents of a suitcase within the trunk. The court based their decision on *Opperman.* See also *United States* v. *Morrow,* 541 F. 2d 1229 (7th Cir. 1976); *United States* v. *Martin,* 556 F. 2d 1143 (10th Cir. 1977); *United States* v. *Walton,* 538 F. 2d 1348 (8th Cir. 1976); *United States* v. *Finnegan,* 568 F. 2d 637 (9th Cir. 1977); *United States* v. *Barnes,* 443 F. Supp. 137 (S.D. New York, 1977); *United States* v. *Thrower,* 442 F. Supp. 272 (E.D. Pa. 1977).

The few state courts which have invalidated inventory procedures have done so for various reasons unconnected with the actual scope of the search, namely, that the impoundment was not justified or the inventory not done pursuant to standard departmental procedure. Interestingly enough, California and South Dakota have ignored the decision rendered by the Supreme Court in *Opperman* on the basis that their state constitutions imposed higher standards than did the Fourth Amendment. The same California courts have likewise invalidated searches incident to arrest. See *People* v. *Norman,* 538 F. 2d 237 (Cal. 1975). However, the vast majority of state courts have also upheld inventory procedures more extensive than those employed in the present case. See *Griffin* v. *State,* 372 N.E. 2d 497 (Ind. App. 1978); *Commonwealth* v. *Tisserand,* 363 N.E. 2d 530 (Mass. App. 1977); *In Re: One 1965 Econoline, Etc.,* 511 P. 2d 168 (Ariz. 1973); *State* v. *Wallen,* 173 N.W. 2d 372, *cert. denied* 90 S. Ct. 211 (1970); *State* v. *Virgil,* 524 P. 2d 1004, *cert. denied* 420 U.S. 955 (N. Mex. App. 1974).

In considering the facts of the case at bar, it cannot be doubted that the inventory performed by Officer Yost was reasonable both in initiation and in scope. The inventory was prompted by the presence of valuables in plain view within the automobile. The inventory procedure was conducted in accord with established departmental procedure. The proper form for such an inventory was carried in the police cruiser, filled out on the scene, and very detailed. Furthermore, the evidence indicates that Officer Yost was of the opinion that the trunk of Robinson's car was easily accessible to vandals (TP 27). He acted in a proper manner in inspecting Robinson's trunk. Once inside the trunk, a further investigation was required to determine which articles required removal to

the police station for adequate protection. It is submitted that it would have been highly unreasonable for Yost to have locked the tools in the police station and abandoned potential valuables in the garbage bag inside a trunk highly accessible to vandals. See, for example, *People* v. *Hamilton*, 371 N.E. 2d 1234 (Ill. App. 1978), wherein the court hinted that the inventory of an individual's belongings would have been more reasonable had it been *more* extensive. The state would vigorously contend that glancing inside the garbage bag was *reasonable* and necessary to achieve the protections sought by virtue of an inventory. To have done less would have been irresponsible. In *United States* v. *Barnes*, 443 F. Supp. 137 (S.D. N.Y. 1977), the court upheld an inventory which extended to smaller bags inside a trunk. The court based their decision on *Opperman* and *Cady*. The goal was to guarantee the protections made clear in *Opperman*.

Finally, the State of Ohio would strongly direct this Court's attention to *United States* v. *Edwards*, 577 F. 2d 883 (5th Cir. 1978), *cert. den.* 99 S. Ct. 458, in which the Fifth Circuit upheld as reasonable an inventory which extended to looking under the carpeting on an automobile's floor. In *Edwards*, pursuant to standard practice, the police conducted an inventory of the automobile's contents. The scope of such a search was put "squarely" into issue by both parties. Rejecting the defendant's contention that the search was pretextual, the court proceeded to clearly enunciate what the State of Ohio here contends is the appropriate rule:

> ". . . the three interests set forth in *Opperman* can be adequately protected if the inventory search is limited in scope to those places within the interior or trunk of an automobile where, under the particular circumstances of the case, property of the owner or occupant can reasonably be expected to be found." *Edwards*, 577 F. 2d at 893.

In applying this rule to the case before them the Fifth Circuit Court went on to say:

> "We now turn to the facts of this case to determine whether the inventory search was reasonable. There can be no doubt that the search was thorough. The record reveals that the officers searched the glove compartment, the trunk, under the seats, and even the crevices between the seats. However, we refuse to necessarily equate thoroughness with unreasonableness. The reasonableness of the search of the automobile floor, under a loose 'carpet flap' in particular, is the issue with which we are confronted today.
>
> The starting point of our analysis is that the police, in conducting an inventory search, may ordinarily inspect the glove compartment, the trunk, on top of the seats as well as under the front seats, and the floor of the automobile. An inspection of these areas is reasonable because these are common locations in or on which it is reasonably to be expected that the owner or occupant of an automobile may place items of personalty. The intrusion, although serious, is justified by the need to protect the property of the owner, and to protect the police from claims. This is to say no more than in the typical case it is not unreasonable for the police to search such places while conducting an inventory.
>
> * * *
>
> We today hold that in conducting an inventory search pursuant to standard police practice, an officer may search those places within an automobile where, under the facts of the particular case, he can reasonably conclude that personal property may be located." *Edwards, supra,* at 894-5.

An examination of the facts of the case at bar in light

of the *Edwards* decision makes it very clear that Officer Yost's conduct was eminently reasonable. He searched those areas of the automobile which constituted likely repositories for the storage of valuables. Furthermore, in light of the Greenhills Police Department's policy of protecting valuables by storage in the police vault, it would have been unreasonable for Yost to have locked the toolbox, tape decks, tapes, etc., in the police station and then abandoned potential valuables in the garbage bag when it was so convenient to glance inside to determine the value of the bag's contents. This is especially so in light of Yost's opinion that the trunk was highly accessible to vandals and the fact that the car was to be stored at a private, non-police lot.

It is respectfully submitted that the inventory performed in the instant case was reasonable in scope and that the evidence inadvertently discovered thereby was admissible at trial as was determined by the trial court.

CONCLUSION

Respondent respectfully submits that the petition for Writ of Certiorari should be denied. This case presents no new or novel constitutional issues. The factual situation presented falls squarely within the parameters of the Court's decisions in *South Dakota* v. *Opperman* and *Cady* v. *Dombrowski*. Neither of those decisions need further elaboration and this case is certainly not the factual vehicle to lend itself to further clarification of those cases. The vast majority of the "facts" now relied upon by petitioner do not exist in the record below. Many of the questions now submitted to this Court were not presented before the Ohio Supreme Court. The Petition for Writ should be denied.

Respectfully submitted,

SIMON L. LEIS, JR.
Prosecuting Attorney

LEONARD KIRSCHNER
Ass't Prosecuting Attorney

DANIEL J. BREYER
Ass't Prosecuting Attorney

COMP #_____

DATE 2/9/76

GREENHILLS POLICE DEPARTMENT
HAMILTON COUNTY OHIO

CIT#_____

TIME 10:30 pm

REPORT OF MOTOR VEHICLE IMPOUNDMENT AND INVENTORY OF PROPERTY

VEHICLE:
MAKE ~~Plym~~ Plym MODEL Pet Vol YEAR 1976 COLOR Brn LICENSE # 9895CN.
OWNER Randolph Robinson ADDRESS 8317 Beta Ave.
DRIVER Same. ADDRESS
OTHER PERSON HAVING CONTROL OF VEHICLE
ADDRESS REASON

REASON FOR IMPOUNDMENT Traffic Arrest.

PROPERTY IN VEHICLE:
PASSENGER COMPARTMENT:
1. Automatic Radio tape deck SN 366587
2. Pioneer Tape deck SN WA 25753
3. 2 Sets Jumper Cables / 19 8 track tapes.
4. one Combination Carpenter Square
5. Hema stat one box of baggies.
6. one pair Channel Locks
7. 19 8 track tapes / 1 case Adolph's 3 year Subs. Tote.
8. 1 Chisel, 1 Screw driver, on Pair Pliers, one 3ft Length Copper wire.
9. 1 box of nails one Baseball Glove, 8 empty bottles.
10. one Set Windshield wipers.

GLOVE COMPARTMENT:
1. one Pair Gloves
2.
3.
4.
5.

TRUNK:
1. Assorted Wood Scraps
2. One metal tool box
3. 6 tubes caulking Compound
4. one Bag containing 14 individual bags of green vegetation
5.
6.
7.
8.
9.
10.

OFFICER MAKING INVENTORY: David P. Jarvis

ARTICLES REMOVED FROM VEHICLE:
1. two tape decks, 19 tapes, metal tool box, 14 plastic
2. bags of green vegetation
3.
4.
5.

DISPOSITION OF VEHICLE: Forest Park Texaco.
DISPOSITION OF KEYS: Ignition to Wrecker Driver.
REMARKS: others to owner.

EXHIBIT
PLF - DEF
STATE

APPENDIX A
Completed Inventory Form